

MORGAN, LEWIS & BOCKIUS LLP  
Daniel Johnson, Jr. (State Bar No. 57409)  
Brett Schuman (State Bar No. 189247)  
Amy M. Spicer (State Bar No. 188399)  
One Market, Spear Street Tower  
San Francisco, CA 94105-1126  
Tel: 415.442.1000  
Fax: 415.442.1001  
djjohnson@morganlewis.com  
bschuman@morganlewis.com  
aspicer@morganlewis.com

MORGAN, LEWIS & BOCKIUS LLP  
Andrew J. Wu (State Bar No. 214442)  
2 Palo Alto Square  
3000 El Camino Real, Suite 700  
Palo Alto, CA 94306-2122  
Tel: 650.843.4000  
Fax: 650.843.4001  
awu@morganlewis.com

Attorneys for Plaintiffs and  
Counterdefendants  
ALPHA & OMEGA SEMICONDUCTOR,  
INC.  
ALPHA & OMEGA SEMICONDUCTOR,  
LTD.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ALPHA & OMEGA SEMICONDUCTOR,  
INC., a California corporation; and  
ALPHA & OMEGA SEMICONDUCTOR,  
LTD., a Bermuda corporation,

Plaintiffs and Counterdefendants,

v.

FAIRCHILD SEMICONDUCTOR  
CORP., a Delaware corporation,

Defendant and Counterclaimant.

AND RELATED COUNTERCLAIMS

TOWNSEND AND TOWNSEND AND  
CREW LLP  
Eric P. Jacobs (State Bar No. 88413)  
Peter H. Goldsmith (State Bar No. 91294)  
Robert A. McFarlane (State Bar No. 172650)  
Igor Shoiket (State Bar No. 190066)  
Two Embarcadero Center, 8th Floor  
San Francisco, CA 94111  
Tel: 415.576.0200  
Fax: 415.576.0300  
epjacobs@townsend.com  
phgoldsmith@townsend.com  
ramcfarlane@townsend.com  
ishoiket@townsend.com

Attorneys for Defendant and  
Counterclaimant  
FAIRCHILD SEMICONDUCTOR  
CORPORATION

Case No. C 07-2638 JSW  
(Consolidated with Case No. C-07-2664 JSW)

**JOINT SUPPLEMENTAL CASE  
MANAGEMENT CONFERENCE  
STATEMENT AND [PROPOSED] ORDER**

Date: February 1, 2008  
Time: 1:30 p.m.  
Location: Courtroom 2, 17th Floor  
Judge: Jeffrey S. White

Pursuant to Civil L.R. 16-9(a) and Patent L.R. 2-1(a), plaintiffs and counterdefendants Alpha & Omega Semiconductor, Ltd. and Alpha & Omega Semiconductor, Inc. (collectively, “AOS”) and defendant and counterclaimant Fairchild Semiconductor Corporation (“Fairchild”) jointly submit this supplemental case management statement and proposed order. Certain sections from the original Joint Case Management Statement filed on August 10, 2007 (Docket No. 28) have been omitted where the issues addressed by those sections have not changed. As described below, the Court consolidated this case for all purposes with *Fairchild Semiconductor Corp. v. Alpha & Omega Semiconductor, Inc., et al.*, Case No. 07-2664 JSW, and the parties request that all provisions of this supplemental case management statement apply to both cases.

## **I. Jurisdiction and Service**

This is an action arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction over the subject matter of this action, including Fairchild’s counterclaims, pursuant to 28 U.S.C. §§ 1331 and 1338. The parties agree that venue is proper in this district and that the Court has personal jurisdiction over all current parties. There are no remaining parties to be served.

## **II. Description Of The Case and Disputed Factual Issues**

This is a patent infringement action. The patents-in-suit relate to certain methods and designs for semiconductor technology. On May 17, 2007, AOS filed the above-captioned suit (the “AOS” action) for patent infringement and declaratory judgment against Fairchild seeking relief for Fairchild’s alleged willful infringement of U.S. Patent No. 5,907,776 (the “776 patent”) and U.S. Patent No. 5,767,567 (the “567 patent”), and a declaratory judgment of alleged non-infringement of U.S. Patent No. 6,429,481 (the “481 patent”) and U.S. Patent No. 6,710,406 (the “406 patent”). On September 28, 2007, pursuant to a stipulated order, AOS filed an amended complaint in which it additionally asserted Fairchild’s willful infringement of U.S. Patent No. 5,930,630 (the “630 patent”).

On May 18, 2007, Fairchild filed suit against AOS in this Court, *Fairchild Semiconductor Corp. v. Alpha & Omega Semiconductor, Inc., et al.*, Case No. 07-2664 (the “Fairchild” action), seeking relief for AOS’s alleged willful infringement of U.S. Patent No. 6,429,481 (the “481

1 patent”), U.S. Patent No. 6,710,406 (the “406 patent”), U.S. Patent No. 6,521,497 (the “497  
 2 patent”), and U.S. Patent No. 6,828,195 (the “195 patent”). On September 28, 2007, pursuant to  
 3 a stipulated order, Fairchild filed amended counterclaims in which it additionally asserted U.S.  
 4 Patent No. 7,148,111 (the “111 patent”) and U.S. Patent 6,818,947 (the “947 patent”).

5 This Court deemed the two cases to be related within the meaning of Civil Local Rule 3-  
 6 12 and the later-filed *Fairchild* action was reassigned to the Honorable Jeffrey S. White on June  
 7 15, 2007. Pursuant to the parties’ stipulation, the Court thereafter consolidated the two actions  
 8 into the AOS action, Civil Action No. 07-2638, on July 31, 2007.

9 AOS asserts that Fairchild has directly, indirectly, contributorily and/or by inducement  
 10 infringed and continues to infringe the AOS patents-in-suit by its manufacture, use, sale,  
 11 importation and/or offer for sale of certain products that embody inventions claimed in the AOS  
 12 patents-in-suit. AOS alleges that this infringement is willful and deliberate. Fairchild denies  
 13 AOS’s allegations, including that Fairchild infringes the ‘776, ‘567, and ‘630 patents. Fairchild  
 14 also raises a number of affirmative defenses to AOS’s claims, including that the ‘776, ‘567, and  
 15 ‘630 patents are invalid.

16 Fairchild asserts that AOS has directly, indirectly, contributorily and/or by inducement  
 17 infringed and continues to infringe the Fairchild patents-in-suit by its manufacture, use, sale,  
 18 importation and/or offer for sale of certain products that embody inventions claimed in the  
 19 Fairchild patents-in-suit. Fairchild alleges that this infringement is willful and deliberate. AOS  
 20 denies Fairchild’s allegations, including that AOS infringes the ‘481, ‘406, ‘497, ‘195, ‘111, and  
 21 ‘947 patents. AOS also raises a number of affirmative defenses to Fairchild’s counterclaims,  
 22 including that the ‘481, ‘406, ‘497, ‘195, ‘111, and ‘947 patents are invalid.

23 The principal factual issues in dispute are:

- 24 1. whether Fairchild has infringed and is infringing the AOS patents-in-suit;
- 25 2. whether Fairchild has contributed to the infringement by others of the AOS
- 26 patents-in-suit;
- 27 3. whether Fairchild has induced others to infringe the AOS patents-in-suit;
- 28 4. whether any such infringement by Fairchild is willful;

5. whether AOS's patents-in-suit are valid;
6. the amount of AOS's damages;
7. whether AOS has infringed and is infringing the Fairchild patents-in-suit;
8. whether AOS has contributed to the infringement by other of the Fairchild patents-in-suit;
9. whether AOS has induced other to infringe the Fairchild patents-in-suit;
10. whether any such infringement by AOS is willful;
11. whether Fairchild's patents-in-suit are valid;
12. the amount of Fairchild's damages.

### **III. Description Of the Legal Issues**

The principal disputed legal issues are:

1. the construction of the claims of the patents-in-suit;
2. the validity of the patents-in-suit;
3. whether any infringement was willful, and if so, the amount of enhanced damages;
4. whether an injunction (or injunctions) should issue if any of the patents-in-suit are found valid, enforceable, and infringed.

### **IV. Motions**

On January 17, 2008, the parties filed a joint motion for an order granting leave to designate up to seventeen terms, phrases or clauses for claim construction. The Court has not yet issued an order resolving this joint motion.

The parties also anticipate filing motions for summary judgment on the issues of infringement and/or invalidity.

Fairchild's Position on Possible Additional Motion: AOS recently hired Dr. Hamza Yilmaz, who was the Senior Vice President of Product and Technology Development at Fairchild until February 27, 2007, and possesses trade secret and attorney-client privileged information relating to this litigation. Fairchild may file a motion for a protective order related to such information in the possession of Dr. Yilmaz if it deems it necessary after meeting and conferring with AOS.

1        AOS's Position: AOS believes that Fairchild's suggested motion related to Dr. Yilmaz is  
2 unnecessary and premature. As this Court is aware, all discovery-related disputes have been  
3 referred to Magistrate Judge Laporte. In addition, AOS has already instituted a number of  
4 procedures to address Dr. Yilmaz's employment. AOS has requested that Fairchild propose  
5 additional precautions it feels may be required so that the parties can meet and confer before  
6 proceeding to any motion practice, if necessary. Fairchild has not proposed any such precautions  
7 to AOS, nor has it identified any procedures Fairchild has proposed and AOS has rejected.  
8 Therefore, any suggestion of motion practice is premature.

9        **V. Disclosures**

10        The parties served their initial disclosures before the initial case management conference  
11 with the Court on August 17, 2007. Fairchild served supplemental disclosures on December 14,  
12 2007, and AOS intends to serve supplemental disclosures before the Case Management  
13 Conference on February 1, 2008. The parties each reserve the right to serve additional  
14 supplement disclosures as discovery continues.

15        **VI. Discovery**

16        Discovery related to claim construction issues is on-going. The Court has referred all  
17 discovery disputes to Magistrate Judge Elizabeth D. Laporte.

18        In order to streamline the discovery process, the parties are currently negotiating a  
19 representative parts agreement as referenced in paragraph VIII(g) of the original joint case  
20 management conference statement filed on August 10, 2007.

21        In addition, Fairchild intends to amend its Preliminary Infringement Contentions.

22        **VII. Settlement and ADR**

23        The parties have agreed to participate in private mediation after the Court has issued its  
24 claim construction ruling.

25        **VIII. Scheduling**

26        The parties agree to the following schedule, adopted by this Court in its October 10, 2007  
27 Order:

EVENT	PARTIES' PROPOSED DATES
Joint Claim Construction Statement Due (Patent L.R. 4-3)	February 8, 2008, provided the Court modifies the schedule pursuant to the parties' stipulation filed concurrently.
Discovery on Claim Construction Closes (Patent L.R. 4-4)	February 27, 2008
Opening Claim Construction Brief(s) Due (Patent L.R. 4-5(a))	March 13, 2008
Opposition Claim Construction Brief(s) Due (Patent L.R. 4-5(b))	March 27, 2008
Reply Claim Construction Brief(s) Due (Patent L.R. 4-5(c))	April 7, 2008
Tutorial	May 20, 2008 at 2:00p.m.
Claim Construction Hearing	May 28, 2008 at 1:30p.m.
Fact Discovery Cut-off	Remainder of dates to be set during post-claim construction case management conference
Disclosure of Identity of Liability Experts	
Written Expert Reports Due	
Rebuttal Expert Reports Due	
Expert Discovery Cut-off	
Deadline for Filing Dispositive Motions	
Pre-trial Conference	
Trial	

**IX. Patent Related Issues Pursuant To Patent Local Rule 2-1(a)**

**A. Use of A Special Master for Claim Construction**

On January 14, 2007, the parties filed a joint motion requesting leave to designate up to 17 terms, phrases or clauses for construction. *See* Joint Motion for an Order Granting Leave to

1 Designate Up to Seventeen Terms, Phrases or Clauses for Claim Construction, filed on January  
 2 17, 2008, Docket No. 134. As detailed in the motion, the parties respectfully seek leave to  
 3 designate the additional terms and would consider the use of a mutually agreeable Special Master  
 4 with respect to claim construction in the event the Court deems it useful.

5 **B. Order of Presentation at the Claim Construction Hearing**

6 The parties propose that AOS will present first at the claim construction hearing with  
 7 respect to the construction of claims of the AOS patents-in-suit and that Fairchild will present  
 8 first at the claims construction hearing with respect to the construction of the claims of the  
 9 Fairchild patents-in-suit.

10 **C. Extrinsic Evidence and Live Testimony at the Claim Construction Hearing**

11 Currently, the parties do not anticipate presenting live testimony at the Claim Construction  
 12 Hearing. If these positions change during the course of discovery and briefing, the parties will  
 13 seek the Court's approval should they decide to present extrinsic evidence at the hearing pursuant  
 14 to the Court's Standing Order for Patent Cases ¶ 10.

15 **D. Need for Limits on Discovery Relating to Claim Construction**

16 The parties do not envision the need for any limits on discovery related to claim  
 17 construction, other than those provided by the Federal Rules or as provided by this Case  
 18 Management Order.

19 **E. Scheduling of a Claim Construction Pre-hearing Conference**

20 At this time, the parties do not anticipate the need for the scheduling of a Claim  
 21 Construction Prehearing Conference.

22 Dated: January 25, 2008

MORGAN, LEWIS & BOCKIUS LLP

24 By: /s/ Brett M. Schuman

Brett M. Schuman  
 Attorneys for Plaintiffs and  
 Counterdefendants  
 ALPHA & OMEGA SEMICONDUCTOR,  
 LTD., AND ALPHA & OMEGA  
 SEMICONDUCTOR, INC.

1 Dated: January 25, 2008

TOWNSEND AND TOWNSEND AND  
CREW LLP

2  
3 By: /s/ Eric P. Jacobs

4 Eric P. Jacobs  
5 Attorneys for Defendant and  
6 Counterclaimant  
7 FAIRCHILD SEMICONDUCTOR  
8 CORPORATION

9  
10 **[PROPOSED] CASE MANAGEMENT ORDER**

11 The Joint Supplemental Case Management Statement and Proposed Order is hereby  
12 adopted by the Court as the Case Management Order for the case. The parties shall comply with  
13 this Order.

14 **IT IS SO ORDERED.**

15 Dated:

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HON. JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE



**ATTESTATION PURSUANT TO GENERAL ORDER 45**

I, Amy M. Spicer, am the ECF user whose ID and password are being used to file this Joint Supplemental Case Management Conference Statement and [Proposed] Order. In compliance with General Order 45, X.B., I declare under the penalty of perjury under the laws of the United States of America that Brett M. Schuman and Eric P. Jacobs have concurred in this filing.

Executed this 25th day of January 2008, at San Francisco, California.

/s/ Amy M. Spicer

Amy M. Spicer